



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,478	10/15/2003	Gary J. Dee	M 6487A CC/SPAP	8048

23657 7590 04/20/2005

COGNIS CORPORATION  
PATENT DEPARTMENT  
300 BROOKSIDE AVENUE  
AMBLER, PA 19002

EXAMINER

QAZI, SABIHA NAIM

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/686,478

Applicant(s)

DEE ET AL.

Examiner

Sabiha Qazi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

Art Unit: 1616

**Non Final Office Action**

Acknowledgment is made of the response filed on 7/20/05. Terminal Disclaimer over co-pending application 10/393,149 has been approved. Amendments are entered. Claims 1-18 are pending. Double Patenting rejection is withdrawn. No claim is allowed. Upon further search and reconsideration following rejections are being made.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

Art Unit: 1616

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over KROPF et al., United States Patent No. 6,316,030 and SCHEUFFGEN, United States Patent No. 4,868,220. These references teach sterol compositions, which embraces Applicant's claimed invention. See the entire documents.

KROPF teaches a composition containing sterols, nanoscale sterol esters and mixtures thereof. See the abstract. Furthermore, it teaches significant increase in absorption of the sterols and sterol esters that include large number of the derivatives of the said compounds, and can be obtained by animal and plant sources, see lines 56-67 in column 1 and 1-38 in column 2. The reference also teaches composition of sterols and sterol esters, which may vary from 0.1 to 5% by, weight, see column 3, lines 25-31. The preparation contain at least one suitable annionic surfactants such as glycerol mono esters and diesters, sorbitan monoesters and diesters, polyalkylene glycols, mixed esters, polyglycerol poly-hydroxy stearate and emulsifiers. See lines 11-67 in column 4 and lines 1-56 in column 5. The formulations may contain suitable oils such as mineral oil, vegetable oil, see examples and claims. In addition use of emulsifiers are taught.

SCHEUFFGEN teaches a composition which is lanolin like characteristics particularly a comparable consistency, a comparable stability in cosmetic emulsion and creams. The lanolin substitute comprising 40-60% by weight of a mixed ester of about equimolar amounts of di-fatty ester and other derivatives of acids, and vegetable sterol esters, see abstract, lines 11-68 in

Art Unit: 1616

column 2. Vegetable sterols include sitosterol, campesterol, stigmasterol and others. See also examples in col. 4-8 and claims. This reference does not teach all the emulsifiers as presently claimed.

Instant claims differ from the reference in different generic scope. Instant invention is generically taught by the prior art.

It would have been obvious to one skilled in the art to prepare additional beneficial compositions because the guidance provided by KTOPF teaches the use of one or more emulsifiers. SCHEUFFGEN teaches sterol ester composition which has a lanolin like characteristic and teaches the composition. The invention would have been obvious because one skilled in the art would look at the guidance provided by the references to make a preparation as presently claimed. All the ingredients are taught by the references.

In absence of any criticality and/or unexpected results instant invention is considered *prima facie* obvious over the prior art.

In the light of the foregoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

#### **Contact Information**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day.

Art Unit: 1616

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Monday, October 17, 2005

  
SABIHA QAZI, PH.D  
PRIMARY EXAMINER